

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 84

This is in reference to the disclosure of interest submitted by Employee A of your department regarding his employment with Company X as a mechanic to repair and maintain equipment to test the fire extinguishing systems in high- and low-rise buildings in this City.

We are of the opinion that Employee A may encounter situations in which he may violate the provisions of RCH Sections 10-102.3 and 10-104.

We understand the facts to be as follows:

1. Ordinance No.4598 amended Section 16-1.1 of the Building Code by adding thereto a new Section 3808 (109A). This ordinance requires that all fire extinguishing systems [systems] of buildings may be subject to annual inspections. It further provides that qualified private individuals, partnerships or corporations may conduct such inspections. The provisions of this ordinance are to be enforced by the Fire Chief.
2. That Employee A is employed by Company X during his off duty hours, which company is authorized by the Fire Chief to inspect and test systems under Ordinance No. 4598.
3. That Employee A's employment with the City is as a fire fighter.
4. That Employee A is employed as a mechanic to repair and maintain equipment which is used to test the systems of any building which is subject to the provisions of Ordinance No. 4598.
5. That the culmination of such testing is the issuance of a certificate to the owner of the building that all systems are in working order.

The threshold question under the foregoing facts is whether the continued employment of Employee A with Company X may result in violations of RCH Sections 10-102.3 and 10-104.

RCH Section 10-102.3 provides that no officer or employee shall:

Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which may *tend to impair his independence of judgment* in the performance of his official duties. [Emphasis added]

Under the foregoing facts, Employee A is working for two masters in connection with a system over which the Fire Chief has jurisdiction because he is required to administer and enforce the provisions of Ordinance No.4598, while Company X has been authorized to test whether such system is in working order under the provisions of said Ordinance No. 4598.1 Employee A, as a subordinate of the Fire Chief, has the duty and obligation to the City that the provisions of Ordinance No.4598 are properly implemented and enforced. Under the foregoing circumstances, Employee A, as an employee of Company X, may find himself in the following examples which may be incompatible with the proper discharge of his official duties or which may tend to impair his independence of judgment in the performance of his official duties.

(1) Employee A may have to make a choice between his private employer's desires as against whether adequate testing of the system was made by his employer. In this instance, the equipment he has been repairing and maintaining may have broken down and he was unable to repair same to complete the testing of the system in a particular building as contracted. His employer then instructs him to discontinue further testing and report the testing completed to the inspector from the Fire Department and obtain certification therefor. Under such circumstances, Employee A would have to make the following choices: (a) whether he reports to his superiors that the testing was not completed, or (b) because he wanted to continue his outside employment with Company X he does not report the incomplete test of the subject system to his superiors.

(2) A situation may occur where Employee A may have failed to complete the repair of a testing equipment but the private employer insists on using such equipment to conduct testing of the system for which he has a contract. Employee A knows very well that by testing the systems with faulty instruments, may result in improper readings as to the efficacy of the system. Under such circumstances, he again has to make a choice whether he will "blow the whistle" on his private employer to his superiors or be silent because of his pecuniary interest and benefits he is receiving from his private employer.

We do not question Employee A's integrity nor do we mean to infer that his employment with Company X would result in Employee A to shirk his duties and responsibilities as a fire fighter of the City. However, since the circumstances of this case give rise to a classic conflict of interest triangle, we are of the opinion that Employee A should not be in a position that he has to make a choice between his private pecuniary interest as an employee of the private employer and his official duties as a fire fighter for the City. Consequently, he should avoid outside employment which places him in a situation where he may have to violate RCH Section 10-102.3.

Another standard of conduct which generally goes hand in hand with RCH Section 10-102.3 is RCH Section 10-104, which reads as follows:

No elected or appointed officer or employee shall use his official position to secure or grant special consideration, treatment, advantage, privilege or exemption to himself or any person beyond that which is available to every other person.

As a general rule, when an employee is in a situation which is incompatible with his official position or in a situation which impairs his judgment in carrying out his official duties, he generally is in a situation where he may be applying two separate standards upon two individuals in similar circumstances arising out of his activity as an employee of the private employer and as an employee of the City. It follows because if there is no incompatibility or error in judgment, Employee A need not secure or grant special consideration, treatment, advantage, privilege or exemption to any person beyond that which is available to every other person.

Perhaps Employee A has never considered his private employment as viewed by this Commission. However, this Commission believes that to permit such private employment to continue may undermine the confidence of the public in your department and thereby adversely affect the operations of your department from the standpoint of your department's duty to inspect systems and to enforce the provisions of Ordinance No. 4598.

Furthermore, the likely public impression is that the Fire Department of the City and County of Honolulu is endorsing the work of Company X or any other company which has employed members of your department. Such implied endorsement should be avoided because it may adversely affect the operations of your department.

In view of the foregoing, we advise that Employee A should terminate his employment with Company X. This advisory opinion is also applicable to any employee of the Fire Department who is employed under similar circumstances.

Dated: Honolulu, Hawaii, September 28, 1978.

ETHICS COMMISSION
Rev. William Smith, Chairman